

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

YUSEF LATEE WILLIAMS,

Petitioner,

v.

Case No. 05-C-233

PHIL KINGSTON,

Respondent.

ORDER

Yusef Latee Williams (“Williams”) is a prisoner incarcerated pursuant to a Wisconsin state court judgment. Proceeding pro se, he seeks a writ of habeas corpus pursuant to 28 U.S.C. § 2254. On July 11th, 2005, this court screened Williams’ petition in accordance with Rule Four of the Rules Governing Section 2254 Cases and order the respondent to answer the petition. On August 10, 2005, the respondent answered the petition. On August 29, 2005, Williams filed a motion for default judgment, which the court denied on February 14, 2006. On October 29, 2007, this court ordered the respondent to provide copies of the transcripts of the state court proceedings pursuant to Rule 5(c) of the Rules Governing Section 2254 Cases. These transcripts were received on November 6, 2007. All parties previously consented to the full jurisdiction of a magistrate judge and on December 27, 2007, this court denied Williams’ petition on its merits. On January 7, 2008, Williams filed a notice of appeal and on January 18, 2008, Williams filed a motion to enlarge the record on appeal.

On January 22, 2008, this court entered an order denying Williams a certificate of appealability pursuant to West v. Schneider, 485 F.3d 393, 394-395 (7th Cir. 2007) because Williams simply filed a notice of appeal and failed to make a substantial showing of a denial of a constitutional right.

On January 29, 2008, Williams filed a motion asking this court to reconsider its denial of a certificate of appealability and its denial of his motion to expand the record. In this motion, Williams asks this court to refer to his “Docketing Statement,” (Docket No. 21), wherein he stated, “A request for a certificate of appealability will follow shortly.” Further, Williams states that he mistakenly believed that he had thirty days from the date he filed his notice of appeal in which to file a request for a certificate of appealability.

The court finds that a petitioner’s mistaken belief that he does not need to request a certificate of appeal at the same time that he files a notice of appeal is not sufficient cause to warrant reconsideration. However, under the circumstances presented in this case, although an appellate docketing statement is ordinarily not a document reviewed by a district court, the court finds that Williams’ prior statement that a certificate of appealability was forthcoming is sufficient to provide cause for this court to accept Williams’ subsequent formal request for a certificate of appealability and thus to reconsider its prior denial of a certificate of appealability.

To obtain a COA, the petitioner must make “a substantial showing of the denial of a constitutional right.” § 2253(c)(2). Where a district court has rejected the constitutional claims on the merits, the showing required to satisfy § 2253(c) is straightforward: the petitioner must demonstrate that reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong.” Slack v. McDaniel, 529 U.S. 473, 484 (2000).

Williams requests a certificate of appealability with respect to eighteen different grounds. Having reviewed Williams' request, for the reasons set forth in this court's prior order denying Williams' petition on its merits, the court believes jurists of reason would not find this court's resolution of Williams' claims to debatable or wrong. Therefore, the court must deny Williams' request for a certificate of appealability.

However, based upon the information contained in his petition to proceed in forma pauperis and supporting affidavit, the court shall grant Williams' motion to proceed in forma pauperis.

Finally, for the reasons set forth in its prior order, the court again declines to grant Williams' motion to expand the record.

IT IS THEREFORE ORDERED that Williams' request for a certificate of appealability is **denied**.

IT IS FURTHER ORDERED that Williams' motion to expand the record on appeal is **denied**.

IT IS FURTHER ORDERED that Williams' motion to proceed in forma pauperis is **granted**.

Dated at Milwaukee, Wisconsin this 20th day of February, 2008.

s/AARON E. GOODSTEIN
U.S. Magistrate Judge